IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 6TH NOVEMBER 2007 / 15TH KARTHIKA 1929

Crl.Rev.Pet.No. 1211 of 2005()

CRA.905/2003 of IV ADDL.SESSIONS COURT, ERNAKULAM
CC.319/1999 of ADDL.CHIEF JUDICIAL MAGISTRATE, ERNAKULAM

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REVN. PETITIONER: APPELLANT/ACCUSED

C.K.SREEDHARAN, AGED 58
S/O. KUMARAN, KARTHIKA, KYPPATTOOR P.O.,
ARAKUNNAM, ERNAKULAM DISTRICT.

BY ADV. SMT.AYSHA YOUSEFF
SMT.MOLLY JACOB
SRI.RAFFEEQUE.K
SMT.C.I.MUMTAZ
SMT.RABIA BEEGAM T.K.

RESPONDENTS: RESPONDENT/COMPLAINANT

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1. RADHA K.R., DEVI VIHAR,
PANDIKASALAPARAMBIL, N.F.GATE, TRIPUNITHURA.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.K.VINOD CHANDRAN
SRI. C.M. NAZAR, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 06/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL. M.A. NO. 7312/2005 IN CRL.R.P. NO. 1211/2005

DISMISSED

06.11.2007 SD/- V. RAMKUMAR, JUDGE.

/True Copy/

P.A to Judge.

V.RAMKUMAR, J.

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Crl.R.P. No. 1211 of 2005

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Dated this the 6th day of November, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No. 319 of 1999 on the file of the Addl. Chief Judicial Magistrate Court, Ernakulam challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice.

4. The learned counsel for the revision petitioner made the following further submissions before me:-

The accused did not have any money transaction with the complainant. He happened to act as a mediator in the dispute in respect of a money transaction between DW2 and the complainant's son Sreekumar. In that mediation, he happened to entrust a signed blank cheque as security to the complainant's son. Subsequently DW2 repaid the entire amount to Sreekumar and the signed blank cheque was converted into Ext.P1. With regard to the statutory notice also, no postal receipt was produced to prove that the statutory notice was sent within time. Without production of the postal receipts, the complainant cannot call into aid the presumption under Section 27 of the N.I Act.

5. I am afraid that I cannot agree with the above submissions. The revision petitioner claims to have given the cheque in discharge of somebody else's liability. But, he did not adduce any reliable evidence before the court below to persuade the court to hold that he had rebutted the presumption under Section 139 of the Negotiable Instruments Act.

6. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

7. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. Having regard to the facts and circumstances of the case, I am, however, inclined to modify the sentence in the light of the recent pronouncement by the Supreme Court that no default sentence can be imposed for an order for compensation under Section 357(3) Cr.P.C. The sentence imposed on the revision petitioner is set aside and instead he is sentenced to pay fine of Rs.50,000/-(Rupees fifty thousand only) which shall be deposited within **four** months from today and on default to make the payment, he shall suffer simple imprisonment for three months. The fine amount shall be paid as compensation under Section 357(1) Cr.P.C.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

V. RAMKUMAR, JUDGE.

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